

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022030666

DECISION

Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 10, 2023, and July 10, 2023. Tami Summerville, Appeals Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC). Claimant's mother (Mother) represented claimant, who was not present at the hearing. A Spanish-language interpreter provided interpreter services during the hearing.

Testimony and documentary evidence was received. At the conclusion of the hearing on July 10, 2023, the ALJ continued the hearing to August 11, 2023, to allow time for OAH to obtain English translations of claimant's Exhibits G, K, M-2 (page B146 only), M-8 and M-9, which were written in Spanish, and for Service Agency to file and

serve any written objection. On July 12, 2023, the ALJ issued a Continuance Order for Evidence Only, which was marked and admitted as Exhibit 99.

On July 21, 2023, OAH received English translations of claimant's exhibits, which were collectively marked as Exhibit O. OAH served Service Agency and Claimant with copies of the translated exhibits on July 24, 2023. OAH did not receive any written objection to the translated exhibits from Service Agency within three business days. Therefore, Exhibit O was admitted.

Service Agency's Position Statement in English was filed with OAH on May 9, 2023, but was not uploaded to Case Center. The Spanish version of Service Agency's Position Statement was uploaded to Case Center and admitted as Exhibit Z14. Upon her own motion, the ALJ marked and admitted Service Agency's Position Statement in English as Exhibit 15.

The record closed and the matter was submitted for decision on August 11, 2023.

ISSUE

Is Claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code section 4500 et seq. (Lanterman Act)?

EVIDENCE RELIED ON

Documentary: Service Agency's exhibits 5, 7, 10, 11, 15, Z1-Z14; Claimant's exhibits A-O; OAH exhibit 99.

Testimonial: Laura McKnight Brown, SCLARC Lead Psychologist Consultant; Wilhelmina Hernandez, SCLARC Physician Consultant; B.J. Freeman, Ph.D.; Kevin Fang, M.D.; Miguel Flores, M.S., BCBA; and Mother.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant is a 22½-year-old female who is not conserved. Claimant lives at home with Mother and three younger siblings.

2. In April 2018, Mother applied for regional center services for claimant, seeking eligibility based on Autism or Intellectual Disability. Service Agency referred claimant to Dr. Thomas L. Carrillo for a psychological evaluation. Dr. Carrillo evaluated claimant in July 2019 and found she did not meet the diagnostic criteria for Autism or Intellectual Disability. In August 2019, Service Agency determined claimant was ineligible for services, and Mother appealed that determination. In October 2019, Service Agency held an informal meeting with Mother, but the appeal was not resolved. Service Agency's records indicate Mother withdrew the appeal prior to the fair hearing. (Exh. 11, p. A117.)

3. On August 26, 2021, Mother again applied for regional center services for claimant. This time, Mother provided Service Agency with a psychological evaluation report dated June 20, 2021, by Dr. Mary-Jo Bautista-Bohall of Accel Therapies. Dr. Bautista-Bohall evaluated claimant and found she met the diagnostic criteria for Autism Spectrum Disorder (ASD), Level 1, and for Attention Deficit/Hyperactivity Disorder (ADHD), Mild. (Exh. Z4, p. Z43.)

4. By letter dated September 20, 2021, Service Agency notified Mother that its interdisciplinary core staff team reviewed claimant's case and determined claimant was ineligible for regional center services because she did not have a "developmental disability" as defined in Welfare and Institutions Code section 4512, subdivision (a)(1). The core staff team determined claimant's diagnosis of ASD by Dr. Bautista-Bohall was not a "substantially handicapping" condition for claimant and, therefore, was not a qualifying condition for regional center services. (Exh. Z1.)

5. On October 27, 2021, Service Agency held an informal meeting with Mother. At that meeting, Service Agency agreed to authorize another psychological evaluation of claimant. Dr. George Meza evaluated claimant in November 2021 and found she did not meet the diagnostic criteria for Autism or Intellectual Disability. Similar to Dr. Carrillo's evaluation, Dr. Meza's evaluation rendered no diagnosis for claimant. In December 2021, the core staff team reviewed claimant's case and again found her ineligible for regional center services.

6. On March 7, 2022, Mother filed a fair hearing request, on claimant's behalf, to appeal Service Agency's decision that Claimant is ineligible for regional center services. This hearing ensued.

Claimant's Background

7. Claimant lives at home with Mother and three siblings (ages 15, 7, and 4). Two older siblings (ages 27 and 24) live outside the family home. Mother is a full-time homemaker. Mother and claimant's biological father have been separated since approximately 2011, and he has occasional contact with claimant. Claimant's 15-year-old sibling is diagnosed with ASD and is a client of SCLARC. (Exh. Z5, p. Z127.) Mother testified she has no family relatives living in this country.

8. Claimant graduated from high school with a diploma in 2019. She currently attends community college. Prior to age 18, claimant attended public schools. She did not receive special education services from the local school district and attended regular education classes.

ARCA Guidelines for Substantial Disability

9. Service Agency contends claimant is ineligible for services under the Lanterman Act. Service Agency's Position Statement states, in pertinent part: "As noted above, Claimant was fully assessed by SCLARC. SCLARC concluded that Claimant does have autism. SCLARC also concluded that Claimant does not have substantial disability in three or more areas of major life functioning as required by the Lanterman Act. (Exh. 15, p. A143.)

10. Under the Lanterman Act, the term "substantial disability" means "the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center and appropriate to the person's age: [¶] (A) Self-care. [¶] (B) Receptive and expressive language. [¶] (C) Learning. [¶] (D) Mobility. [¶] (E) Self-direction. [¶] (F) Capacity for independent living. [¶] (G) Economic self-sufficiency." (Welf. & Inst. Code, § 4512, subd. (1)(1).)

11. At hearing, Service Agency presented the Association of Regional Center Agencies' (ARCA's) "Clinical Recommendations for Defining 'Substantial Disability' for the California Regional Centers" (ARCA Guidelines). (Exh. Z12.) The ARCA Guidelines set forth guidelines for regional centers to consider when determining whether or not an individual has a substantial disability in at least three or more of the areas of major life activity. The ARCA Guidelines for each area of major life activity are summarized in Findings 12 through 18, below.

12. Self-care may be selected as an area of substantial disability where the individual “has significant limitations in the ability to acquire and perform basic self-care skills.” (Exh. Z12, p. Z185.) The regional center should consider personal hygiene (e.g., toileting, washing and bathing, brushing teeth); grooming (e.g., dressing, undressing, hair and nail care); and feeding (e.g., chewing and swallowing, eating, drinking, use of utensils). (*Ibid.*)

13. (A) Receptive and expressive language may be selected as an area of substantial disability where the individual “has significant limitations in both the comprehension and expression of verbal and/or nonverbal communication resulting in functional impairments.” (Exh. Z12, p. Z185.) The ARCA Guidelines include the following Note: “There must be impairment in receptive and expressive language to consider Receptive and Expressive Language to be an area of substantial disability.” (*Ibid.*, underlining in original.) The regional center should consider “[s]tandardized measures of receptive and expressive language.” (*Ibid.*)

(B) Receptive language includes significant difficulty understanding a simple conversation; needing information to be rephrased to a simpler level in order to enhance understanding; significant difficulty following directions (not due to general noncompliance); significant difficulty understanding and interpreting nonverbal communication (e.g., gestures, facial expressions). (*Ibid.*)

(C) Expressive language includes significant difficulty communicating information; significant difficulty participating in basic conversations (e.g., following rules for conversation and storytelling, tangential speech, fixation on specific topics); atypical speech patterns (e.g., jargon, idiosyncratic language, echolalia) significantly impair the individual’s ability to communicate. (*Ibid.*)

14. Learning may be selected as an area of substantial disability where the individual is "substantially impaired in the ability to acquire and apply knowledge or skills to new situations even with special intervention." (Exh. Z12, p. Z186.) The regional center should consider general intellectual ability; academic achievement levels; retention (e.g., short and/or long-term memory); reasoning (e.g., ability to grasp concepts, to perceive "cause and effect" relationships; ability to generalize information and skills from one situation to another). (*Ibid.*)

15. Mobility may be selected as an area of substantial disability where the individual "has significant limitations with independent ambulation." (Exh. Z12, p. Z186.) Mobility "does not refer to the ability to operate motor vehicles or use public transportation." (*Ibid.*) The regional center should consider needing crutches, walker, or wheelchair for mobility; and gait abnormalities and/or coordination problems significantly interfere with mobility (e.g., unable to walk long distances due to fatigue from significant effort involved in ambulating, difficulty negotiating stairs or uneven ground). (*Ibid.*)

16. Self-direction may be selected as an area of substantial disability where the individual "has significant impairment in the ability to make and apply personal and social judgments and decisions." (Exh. Z12, p. Z186.) The regional center should consider emotional development (e.g., routinely has significant difficulty coping with fears, anxieties or frustrations, severe maladaptive behaviors, such as self-injurious behavior); interpersonal relations (e.g., has significant difficulties establishing and maintaining relationships with family or peers, social immaturity, marked difficulty protecting self from exploitation); and personal judgment (e.g., significant difficulty in making appropriate choices, maintaining daily schedules, following medically prescribed treatments and diet). (*Id.* at p. Z187.)

17. Capacity for independent living may be selected as an area of substantial disability where the individual “is unable to perform age-appropriate independent living skills without the assistance of another person.” (Exh. Z12, p. Z187.) The regional center should consider the following: significant difficulty performing age-appropriate, simple household tasks; significant difficulty managing multiple-step domestic activities (e.g., grocery shopping, meal planning and preparation, laundry, care and selection of clothing, home repair and maintenance); does not have age-appropriate capacity to be left unsupervised (e.g., lack of safety awareness); significant difficulty with money management (e.g., using bank accounts, making small purchases independently) and budgeting; significant difficulty taking the basic steps necessary to obtain appropriate health care (e.g., obtaining medication refills, obtaining medical attention when needed). (*Ibid.*)

18. Economic self-sufficiency may be selected as an area of substantial disability where the individual “lacks the capacity to participate in vocational training or to obtain and maintain employment without significant support.” (Exh. Z12, p. Z187.)

Intake Meeting

19. On April 16, 2018, SCLARC service coordinator Barbara Linares held an intake meeting with Mother and claimant. Ms. Linares prepared a written Lanterman Psycho-Social report that summarized the information provided by Mother and claimant during the intake meeting. (Exh. Z3.) Mother had contacted Service Agency for an assessment because of her concerns about claimant’s overall development and lack of communication skills.

20. At the time of the intake meeting, claimant was 17 years, four months old. Ms. Linares noted that claimant established good eye contact and sat quietly for most of the interview. Claimant attended high school and was in the eleventh grade. She was not in special education and had been attending the same school since ninth grade. Mother reported claimant was doing well in school but struggled due to "not being able to express herself." (Exh. Z3, p. Z30.) Claimant reported she received A, B, and C grades in school. Claimant also reported, "It's hard for me to say what I am thinking or feeling. It's hard for me to get to the point or to say what my thoughts are." (*Ibid.*)

21. During the intake meeting, Mother reported that claimant lived at home with three younger siblings. One of claimant's siblings was receiving Early Start services due to developmental delays and vision concerns. Another sibling "has a 504B Plan due to cognitive concerns." (Exh. Z3, p. Z28.) Mother reported she had a family history of depression and anxiety. Mother reported that during her pregnancy with claimant she felt depressed and anxious, and she received therapy throughout the pregnancy.

22. During the intake meeting, Mother and claimant reported on claimant's current functioning. In the area of motor skills, Ms. Linares noted claimant was able to walk, run and climb, and no concerns were observed during the interview.

23. In the area of self-care, Mother and/or claimant reported that claimant can cook eggs and quesadillas, use a microwave oven, make a sandwich, and use utensils. She can make her bed and wash dishes. Her responsibilities at home included washing dishes and cleaning up after herself. Claimant reported she does not do her chores when "I get lazy." (Exh. Z3, p. Z29.) Mother reported claimant is unable to seek basic medical help; for example, claimant does not tell Mother when she has cramps or

needs a feminine pad. Claimant can administer medication and has full bladder control. Claimant reported she can shower, brush her teeth, keep clean clothes, dress herself, and put on her shoes. Mother reported claimant can maintain good hygiene with reminders. Claimant is unable to take transportation on her own. She can handle small amounts of money but is unable to order food in a restaurant.

24. In the social/behavioral/emotional area, claimant reported having friends at school and that she "liked to talk to them, go to the movies, and eat." (Exh. Z3, p. Z30.) Claimant reported knowing her friends since elementary school. Claimant reported she enjoys dancing, listening to music, and watching movies. She also reported that she "prefers to be at home." (*Ibid.*) Claimant reported "she gets anxious socializing with other people." (*Ibid.*) Mother reported claimant is aggressive, in that she talks back and attempts to hit. Mother denied claimant engages in self-injurious behavior. Claimant reported "she gets anxious when something new happens" and "being around a lot of people in bigger places makes her anxious." (*Ibid.*) Mother reported, "[Claimant] tells me she feels dumb or that other people know more than her. She won't talk to me if other people are around." (*Ibid.*) Mother denied that claimant engaged in repetitive body movements.

25. In the area of communication, Ms. Linares noted: "[Claimant] does not exhibit speech delays, but has difficulty with articulation. She was able to communicate using complete sentences." (Exh. Z3, p. Z30.) In the area of cognitive abilities, claimant reported she is able to see and hear well, and she wears eyeglasses. Claimant can associate time with an event (e.g., nighttime to go to sleep). She can state her full name, address, and telephone number. Claimant reported she was taking statistics in school. Claimant can read but has difficulty processing the information she reads. Mother reported claimant is unaware of danger, in that she will get in a car with peers.

26. Based on the information provided by Mother and claimant at the intake meeting, Ms. Linares recommended that Service Agency coordinate a psychological assessment, refer for an appropriate educational placement, request medical and school records, and present all findings to the interdisciplinary team for an eligibility determination.

Evaluation by Dr. Carrillo

27. Thomas L. Carrillo, Ph.D., a clinical psychologist, conducted a psychological evaluation of claimant on July 10, 2019. Service Agency referred claimant to Dr. Carrillo for evaluation due to suspected developmental delays, specifically Intellectual Disability and ASD. Claimant was 18½ years old at the time of the evaluation. Mother accompanied claimant to the evaluation and provided pertinent historical information.

28. Dr. Carrillo prepared a written Psychological Evaluation report that summarized his findings and conclusions. (Exh. Z2.) Dr. Carrillo conducted interviews of Mother and claimant, made behavioral/clinical observations of claimant, reviewed records, and administered the following testing: Wechsler Adult Intelligence Scale, 4th Edition (WAIS-IV); Wide Range Achievement Test, Revision Four (WRAT-4); Vineland Adaptive Behavior Scales, Third Edition (Vineland); Childhood Autism Rating Scale, High Functioning Version (CARS); and Autism Diagnostic Interview, Revised (ADI-R).

29. The records reviewed by Dr. Carrillo were claimant's high school transcript for her junior year, and the Psycho-Social report prepared by Ms. Linares. Dr. Carrillo noted claimant's junior year transcript indicated she was expected to graduate high school in 2019, her overall grade point average was 3.283, and she was in general education classes. From the Psycho-Social report, Dr. Carrillo noted, among other

things, that claimant established good eye contact; she reported having friends at school; she enjoyed dancing, listening to music, and watching movies; she, at times, preferred to be home; and she reported being anxious in social situations, especially when she is in large venues with many people.

30. Dr. Carrillo made behavioral/clinical observations of claimant, which are summarized in his written report, in part, as follows: "[Claimant] presented herself as a soft-spoken and somewhat cautious young woman. She quickly warmed up to the unfamiliar testing environment and demonstrated good social skills. Her eye contact was good and meaningful. She shared information with this examiner and sought out information. She shared that she intends to go to Southwest College since she has graduated from high school. When asked that [*sic*] she was going to major in, she indicated that she would like to first complete her general education courses." (Exh. Z2, pp. Z21 to Z22.)

31. Dr. Carrillo administered the WAIS-IV to assess claimant's cognitive functioning. Claimant's scores on the WAIS-IV were as follows: Verbal Comprehension was 95; Perceptual Reasoning was 109, Working Memory was 95, Processing Speed was 122, and her full-scale IQ score was 110. (Exh. Z2, p. Z26.) Dr. Carrillo opined these scores "would suggest that [claimant's] cognitive abilities are within the normal range with bright normal abilities in the subtest of Processing Speed." (*Id.* at p. Z22.)

32. Dr. Carrillo administered the WRAT-4 to further assess claimant's cognitive ability based on academic achievement. Claimant's scores in the areas of Word Reading and Sentence Comprehension were at the grade equivalent of 10.7, and her score in Spelling was at the grade equivalent of 10.8. Claimant's lowest score was in Mathematics Computation, which was at the grade equivalent of 7.3. Dr. Carrillo

opined that claimant's scores on the WAIS-IV and WRAT-4 seemed "to substantiate that [claimant's] cognitive abilities are within the normal range." (Exh. Z2, p. Z22.)

33. Dr. Carrillo administered the Vineland to assess claimant's adaptive functioning. Claimant's standard scores on the three domains of the Vineland were as follows: Communication was 103 (normal range), Daily Living Skills was 83 (low normal range), and Socialization was 76 (borderline range of delay). Claimant's Adaptive Behavior Composite was 84, indicating overall adaptive abilities within the low normal range. (Exh. Z2, p. Z23.) Dr. Carrillo opined that claimant "would benefit from exposure to socially enriching environments so as to improve her social skills to a level that is consistent with her potential." (*Ibid.*)

34. Dr. Carrillo noted claimant "did not display any unusual or bizarre behavior" or "any symptomology associated with a psychiatric diagnosis. She was seen as a fairly well-adjusted young woman." (*Ibid.*) Dr. Carrillo administered the CARS and the ADI-R to assess claimant for ASD. Claimant's score on the CARS was within the "minimum to no symptoms" range, and her scores on the ADI-R were below the threshold for a diagnosis of ASD.

35. Based on his evaluation, Dr. Carrillo concluded that claimant "presents as an individual with normal cognitive abilities and low normal adaptive skills due to diminished capacity in social skills. She did not display any behaviors associated with Autism." (Exh. Z2, p. Z24.) His diagnostic impression of claimant was that she had "No Diagnosis." (*Ibid.*) Dr. Carrillo opined that the results of his evaluation of claimant "are consistent with the presence of normal cognitive abilities, normal communication skills and low normal adaptive skills." (*Ibid.*)

Evaluation by Dr. Bautista-Bohall

36. Mary-Jo Bautista-Bohall, Psy.D., a licensed clinical psychologist with Accel Therapies, conducted a psychological evaluation of claimant on June 2, 15, and 17, 2021. At the time of the evaluation, claimant was 20½ years old. Claimant's physician referred claimant to Dr. Bautista-Bohall for evaluation due to concerns of ASD. Mother had reported claimant has difficulty socializing with peers, prefers to be alone, has difficulty focusing, experiences frequent anxiety, exhibits mood swings, does not exhibit appropriate affect at times, and is aversive to some sensory behaviors. (Exh. Z4, p. Z33.)

37. Dr. Bautista-Bohall prepared a Psychological Evaluation Report dated June 20, 2021, which summarized her findings and conclusions. (Exh. Z4.) Dr. Bautista-Bohall conducted a psycho-social evaluation with claimant and Mother, made behavioral observations of claimant, and administered the following testing: the WAIS-IV, the Vineland, the ADI-R, and the Gilliam Autism Rating Scale, Third Edition (GARS-3).

38. Dr. Bautista-Bohall's psycho-social evaluation noted the following: "[Claimant] currently attends Los Angeles Southwest College. She does not have history of special education. However, she reports having difficulty turning in homework on time and a lack of participation in class. [Claimant] also reports that at times she refuses to go to school due to anxiety about class presentations and socializing with peers. Mother reported that [claimant's] grades range at As and Bs. Her best subjects are art and science and has the most difficult [*s/c*] with math and history. [Claimant] has been seeking therapy for the past year and a half at St. Francis Counseling Center. She was previously diagnosed with Bipolar at the age of 16 and

started took [*sic*] medications for about 4 months. She was then diagnosed by another therapist with a Mood Disorder.” (Exh. Z4, pp. Z34 to Z35.)

39. Dr. Bautista-Bohall made the following behavioral observations of claimant: “[Claimant] was prompt and well-groomed for the assessment appointments. She was oriented to person, place, and situation. She was able to sit in a calm manner throughout the assessment. [Claimant] was pleasant and answered all questions to the best of her ability. She took her time but seemed very confident during block design. She did seem to have a more difficult time during arithmetic and reported that she was not that good in math. However, [Claimant] put forth her best effort and was able to complete all tests.” (Ex. Z4, p. Z35.)

40. Dr. Bautista-Bohall administered the WAIS-IV to assess claimant’s intellectual functioning. Claimant’s overall composite scores on the WAIS-IV yielded a Verbal Comprehension score of 100 (average), a Perceptual Reasoning score of 111 (high average), a Working Memory score of 80 (low average), a Processing Speed score of 129 (superior), and a full-scale IQ score of 106 (average). (Exh. Z4, p. Z35.)

41. For the WAIS-IV, Dr. Bautista-Bohall also calculated a General Abilities Index (GAI) score for claimant. The GAI is usually considered a better representation of overall intelligence for individuals who score significantly lower in working memory and processing speed because it does not take into account those indices. Dr. Bautista-Bohall explained: “Due to [claimant’s] scores having a difference of more than 1.5 standard deviations, the GAI has been calculated. [Claimant] obtained a GAI score of 105 falling within the Average range.” (Exh. Z4, pp. Z35 to Z36.)

42. Dr. Bautista-Bohall administered the Vineland to assess claimant’s adaptive behaviors. Claimant’s standard scores on the Vineland were as follows:

Communication was 137 (high), Daily Living Skills was 94 (adequate), Socialization was 76 (moderately low), and the Adaptive Behavior Composite was 102 (adequate). (Exh. Z4, p. Z36.)

43. Dr. Bautista-Bohall administered the ADI-R to assess claimant for ASD. Mother reported on claimant's functioning "during the ages of 4-5" in the areas of social interaction and communication. Regarding social interaction, Mother reported claimant "had some difficulty being responsive to other children's approaches," she was "somewhat unpredictable and more responsive to her siblings," and she "had difficulty with direct gaze, social smiling and appropriate range of facial expressions used to communicate." (Exh. Z4, p. Z38.) Regarding communication, Mother reported claimant "rarely pointed to express interest when needed" and she "was not consistent with imitative social play and reciprocal conversation." Based on Mother's reporting, Dr. Bautista-Bohall concluded "there is evidence of abnormality of development before the age of 36 months." (Exh. Z4, p. Z38.) Dr. Bautista-Bohall also administered the GARS-3 to assess claimant for Autism. Claimant's Autism Index was 66, which was in the "probable" range for ASD with a severity level of 1. (*Ibid.*)

44. Dr. Bautista-Bohall concluded that claimant met the DSM-5 diagnostic criteria for ASD. (Exh. Z4, pp. Z40 to Z42.) Additionally, Dr. Bautista-Bohall concluded that claimant's difficulty with social interactions and fidgeting behaviors at school might also be due to anxiety and Attention Deficit/Hyperactivity Disorder (ADHD). Dr. Bautista-Bohall wrote in her report: "[Claimant's] inconsistent social interactions and fidgeting behaviors in school may also be explained by anxiety and ADHD. She has history of difficulty with concentrating, staying focused and turning in schoolwork. She also reports difficulty initiating tasks. Furthermore, her Working Memory index was

significantly lower than other indices[,] falling within the Low Average range, which is common with individuals with ADHD.” (*Id.* at p. Z40.)

45. Based on her evaluation, Dr. Bautista-Bohall diagnosed claimant with ASD (without accompanying intellectual or language impairment) and ADHD (predominantly inattentive presentation, mild). (Exh. Z4, p. Z43.)

Evaluation by Dr. Meza

46. George Jesús Meza, L.C.S.W., Ph.D., a licensed clinical social worker and licensed psychologist, conducted a psychological evaluation of claimant on November 17 and 30, 2021. Service Agency referred claimant to Dr. Meza for a psychological evaluation due to Mother’s concern that claimant might have ASD. Claimant was almost 21 years old at the time of the evaluation.

47. Dr. Meza prepared a written Psychological Evaluation report that summarized his findings and conclusions. (Exh. Z5.) Dr. Meza reviewed records (i.e., the evaluation reports by Drs. Carrillo and Bautista-Bohall, and the Psycho-Social report by Ms. Linares), conducted clinical interviews, observed claimant in the community, and administered the following testing: Wechsler Abbreviated Scale of Intelligence, 2nd Edition (WAIS-II), Wide Range Achievement Test, 5th Edition (WRAT-5), Adaptive Behavior Assessment Scale, 3rd Edition (ABAS-3), and Autism Diagnostic Observation Scale-2 (ADOS-2).

48. In his written report, Dr. Meza summarized claimant’s developmental history, relevant family history, medical history, and mental health history. Dr. Meza summarized claimant’s mental health history as follows: “At age 16, [claimant] was diagnosed with Bipolar disorder at the St. Francis Children's Counseling Center in South Gate. Mother reported symptoms at that time as social isolation, ‘not eating,’

and 'not wanting to live anymore.' [Claimant] was seen in therapy for approximately 1 year. [¶] At age 18, [claimant] began services at the Tessie Cleveland Children's Mental Health Center. She still sees a therapist weekly. In addition, [claimant] is currently participating in Applied Behavior Analysis (ABA) services virtually. [¶] Mother reported current mental health symptoms as 'she likes to be alone, doesn't like to socialize, needs reminder to take care of herself.' Mother noted that she has to remind [claimant] to attend to her grooming and self-care." (Exh. Z5, pp. Z127 to Z128.)

49. Dr. Meza summarized claimant's educational history as follows: "[Claimant] graduated with a diploma in 2019 from South East High School in South Gate, CA. While in school, she was in regular classes and did not have an Individual Education Plan (IEP). [¶] [Claimant] is currently attending Southwest College. She attends virtual classes. [Claimant] receives support from the Students with Disabilities program." (Exh. Z5, p. Z128.) Dr. Meza noted that claimant "has no employment history," and she "does not participate in any formalized, social recreational activities." (*Ibid.*)

50. Dr. Meza's behavioral observations of claimant included the following:

[Claimant] arrived on time to the assessment interview accompanied by her mother. [Claimant] presented with a flat and restricted affect. She transitioned to the testing room without incident. [Claimant] was cooperative and answered questions posed by the Assessor.

During testing, [claimant] presented as cooperative. Her speech was clear and fluent. Her volume was within the appropriate limits. Regarding the quality of her

communication, [claimant] could communicate using vocalizations and gestures.

[Claimant] reliably answered yes/no questions and pointed to make choices. She used her facial gestures and nonverbal communication for a variety of pragmatic functions. Her eye contact was consistent. Once she relaxed in the testing setting, [claimant] self-disclosed pertinent issues and answered questions honestly as posed by the Assessor.

(Exh. Z5, pp.Z129.)

51. As part of the evaluation, Dr. Mezz observed claimant during a community outing with Mother on November 30, 2021. Claimant, Mother, and Dr. Meza walked from Dr. Meza's office to a local restaurant to order a meal. During the walk outside, Dr. Meza observed claimant walked with an appropriate gait and did not tiptoe walk, she gave no eye contact and either looked forward or towards the ground as she walked, she had no observable hand or finger movements, she stopped at the stop light, and she "went with the flow of the walk but did not attend or participate in the conversation [between Mother and Dr. Meza]." (Exh. Z5, p. Z129.)

52. During the walk, Mother spoke of her concerns regarding claimant's social and adaptive skills, that claimant was diagnosed with Autism by a previous psychologist, and claimant was participating in ABA services. Mother stated she thought the ABA services were helping claimant. When Dr. Meza asked claimant if she felt the ABA services were helping her, claimant replied "yes," but she did not contribute further to the conversation.

53. At the restaurant, Dr. Meza asked claimant what she wanted, pointing at the menu posted behind the counter. Initially, claimant did not answer, and Mother began to respond for her. Dr. Meza redirected Mother to let claimant order. Dr. Meza again prompted claimant to order her food, and she did, telling the clerk she wanted a dessert with ice cream and a latte. Dr. Meza, claimant, and Mother then sat down at a table outside the restaurant. At Dr. Meza's suggestion, the group walked to a park-like area across the street to wait for their meals, to ensure privacy. They all sat at a bench and Mother continued to talk about her concerns regarding claimant. After a moment, Dr. Meza suggested he and claimant walk around the park while Mother wait at the bench. Mother and claimant agreed. Dr. Meza summarized his conversation with claimant as follows:

As they walked, the Assessor [Dr. Meza] inquired about [claimant's] feelings regarding the topics her mother was discussing. She stated, "I just spaced out." The Assessor inquired about mother's reports that she has to bathe [claimant], to which she stated, "I have scalp problems, so she puts this special shampoo in my hair." When the Assessor inquired again as to whether her mother bathed her, [claimant] replied, "not my body, she just does my hair when I need that shampoo." The Assessor continued the walk and used exploratory questions to check in about [claimant's] feelings about the assessment process. She stated that "I get nervous when people ask me a lot of questions."

(Exh. Z5, p. Z130.)

54. Dr. Meza and claimant returned to the bench where Mother was waiting. The restaurant clerk brought the food to the group. Mother took the food, to be eaten at home. Dr. Meza walked claimant and Mother back to their car. Dr. Meza noted: "As [claimant] departed, she waved and said 'bye' to the Assessor, while giving eye contact." (*Ibid.*) Dr. Meza summarized his observations as follows: "Throughout the observation, [claimant] did not present with any of the symptoms associated with an ASD[,] i.e., repetitive finger or hand movements. When alone, [claimant] engaged in reciprocal conversation with the Assessor and went with the flow of the observation activities." (*Ibid.*)

55. Dr. Meza administered the WAIS-II to assess claimant's cognitive abilities. Claimant's scores on the WAIS-II indicated claimant's verbal comprehension abilities were in the high average range (standard score of 113), her perceptual reasoning abilities were in the average range (standard score of 105), and her full-scale IQ was in the high average range (standard score of 110). Additionally, Dr. Meza administered the WRAT-5 to measure claimant's academic skills. Claimant's scores on the WRAT-5 indicated her word reading was in the low average range (standard score of 83), spelling was in the average range (standard score of 105), and math computation skills were in the average range (standard score of 96).

56. Dr. Meza administered the ABAS-3 to assess claimant's adaptive behavior, with Mother serving as the informant. For the General Adaptive Composite, the Conceptual Composite, and the Practical Composite, claimant tested in the extremely low range. Dr. Meza found that the findings of the adaptive questionnaire were not consistent with the findings of his assessment of claimant. For example, Mother reported claimant does not consistently say "hello" or "goodbye" to others, she never looks at other people's faces when they talk to her, and she is unable to look

both ways before crossing the street. (Exh. Z5, p. Z131.) Contrary to Mother's reporting, Dr. Meza found claimant was able to greet and say "bye" during the evaluation sessions, she looked at Dr. Meza's face while carrying on a conversation with him, and she stopped at a red light and waited for the green light during the community walk. (*Ibid.*) Dr. Meza did note claimant self-reported that she spends most of her time playing games on her cell phone in her room, she has no friends and does not socialize, and she is unable to keep a stable group of friends. (*Id.* at pp. Z131 to Z132.)

57. Dr. Meza administered the ADOS-2 to assess claimant for ASD. As explained in Dr. Meza's report, the ADOS-2 activities "allow the Assessor to observe and note behaviors that are identified as characteristic of an ASD. A clinical diagnosis of ASD may be appropriate if an individual's comparison score is equal to or greater than the Autism Spectrum cut-off. Based on Module 4, [claimant's] comparison score did not meet the criteria for a diagnosis of Autism." (Exh. Z5, p. Z132.) Dr. Meza summarized his findings from the ADOS-2 as follows:

In the area of Communication, stereotyped and idiosyncratic use of words or phrases was not evident. Descriptive, conventional, instrumental, and informative gestures were within the appropriate limits for her age. There was variation in her speech and tone, emphatic or emotional gestures were observed. [Claimant] spoke with a typical prosody.

In the area of Reciprocal Social Interactions, [claimant] gave consistent eye contact. She presented with awareness of self-responsibility in her comments. The quality of social

overtures was adequate. The quality of social responses was atypical, however, she endorsed anxiety about going out and socializing with others. The amount of reciprocal social communication was within the appropriate limits, however, this is not attributable to an ASD.

In the area of Restricted and Repetitive Behaviors, there were no repetitive finger or hand movements. No unusual sensory interest in play materials was evident. No compulsions or rituals were identified. She reported specific food preferences because "I'm afraid I will waste the food if I don't like it."

(Exh. Z5, p. Z132.)

58. Based on his evaluation of claimant, Dr. Meza concluded that claimant did not meet the DSM-5 diagnostic criteria for Intellectual Disability or ASD. (See Exh. Z5, pp. Z133 to Z134.) His DSM-5 diagnosis for claimant was "No Diagnosis." (*Ibid.*)

Service Agency's Witnesses

TESTIMONY OF DR. BROWN

59. Laura McKnight Brown is SCLARC's Lead Psychologist Consultant. Dr. Brown is licensed in California as a psychologist. She has a bachelor's degree in psychology, a master's degree in psychology with a clinical emphasis, and a doctorate in psychology. Dr. Brown has been SCLARC's Lead Psychologist Consultant for the past five years. Her duties include working on the core staff team to determine if eligibility criteria are met.

60. Dr. Brown explained that eligibility for regional center services is determined according to the Lanterman Act. The core staff team reviews and discusses the applicant's entire chart to determine whether the eligibility criteria are met. For claimant's case, the core staff team reviewed all available information, including the psychological evaluation reports of Drs. Carrillo, Bautista-Bohall, and Meza, and the Psycho-Social report by Ms. Linares.

61. Dr. Brown testified regarding the core staff team's determination that claimant is not "substantially disabled" in three of the major areas of life activity. Both Dr. Carrillo and Dr. Bautista-Bohall administered the Vineland to assess claimant's adaptive functioning. The scores from their respective testing indicated overall adaptive behavior in the "low normal range" (Dr. Carrillo) and "adequate" (Dr. Bautista-Bohall), with the area of Socialization having the lowest score (standard score of 76) for both doctors. (See Exh. Z2, p. Z26; Exh. Z4, p. Z37.) Dr. Brown testified claimant's adaptive functioning scores were not indicative of a substantial disability.

62. According to Dr. Brown, the core staff team discussed the drop in claimant's adaptive functioning during the four months between Dr. Bautista-Bohall's evaluation and Dr. Meza's evaluation. At age 18, Dr. Carrillo found claimant's adaptive functioning was low average. Two years later, in June 2021, Dr. Bautista-Bohall similarly found claimant's adaptive functioning was adequate. However, four months later, in November 2021, Dr. Meza found claimant's adaptive functioning was in the extremely low range, based on Mother's reporting. Dr. Brown testified there was a "significant" and "notable" drop in claimant's adaptive functioning between June and November 2021. Because of that drop, and the conflicting ASD diagnoses, the core staff team discussed whether claimant's condition was substantially handicapping, as defined in the Lanterman Act.

63. Dr. Brown explained that a significant drop in adaptive functioning outside of the developmental period, i.e., prior to age 18, generally does not happen with a developmental disability. Dr. Brown explained that a drastic drop in adaptive functioning outside of the developmental period, as in claimant's case, might indicate the onset of mental health concerns. Dr. Brown explained if there is a mental health concern, there may be a drop in adaptive functioning and deficits in social functioning. For example, a loss of interest in pleasurable activities, no motivation to engage in activities, appetite and sleep may be affected, and thinking and concentration might be impacted. Dr. Brown testified that typical recommendations for a drop in adaptive functioning include mental health treatment and medication compliance. Dr. Brown noted the psychological evaluations discussed claimant having mental health concerns, including anxiety, a diagnosis of bi-polar that was changed to mood disorder, and a diagnosis of ADHD.

TESTIMONY OF DR. HERNANDEZ

64. Wilhelmina Hernandez is SCLARC's Physician Consultant. Dr. Hernandez is familiar with claimant's case based on her review of records. Dr. Hernandez reviewed claimant's case from a developmental standpoint. She opined that claimant does not have a qualifying regional center diagnosis.

65. Based on her review of records, Dr. Hernandez noted that initial behavior concerns with claimant were at age 16, when she was diagnosed with bi-polar disorder. Claimant was followed for one year and had weekly counseling sessions between ages 16 and 18. Dr. Hernandez noted that the Psycho-Social report taken when claimant was age 18 indicated she had good eye contact, she reported having friends and being social, but she had anxiety around social situations. Dr. Hernandez

noted claimant did not receive special education, she had a GPA of 3.2, and she appeared to be a typical child.

66. Dr. Hernandez noted that a psychological evaluation report by Dr. B.J. Freeman stated claimant had a diagnosis of ASD in her early years; however, Dr. Hernandez saw no evidence to support that. Dr. Hernandez testified she does not agree with an Autism diagnosis for claimant. She noted claimant did not show autistic traits prior to age 18 except for language delay, which is common in a child's early years. Dr. Hernandez opined that in order for claimant to perform academically, she would need to have cognitive abilities and adaptive living skills at the same level. But there was a drop in claimant's adaptive functioning from June 2021 to November 2021, which Dr. Hernandez opined was due to claimant's mental health issues. Dr. Hernandez opined that claimant has the capability to perform academically in school, but she can get frustrated, especially in the independent setting of college, which leads to her feeling lost and depressed.

67. Dr. Hernandez explained that "continual prompting" to prevent a person from making errors is one form of support for persons with mental health issues that can improve mental health symptoms. Dr. Hernandez's opinion is that claimant is capable of doing things, but her motivation has dwindled as she has become older. Claimant is now an adult facing more independent situations, but she has difficulty self-regulating, which leads to her mild depression.

68. Dr. Hernandez opined that claimant's behavior challenges started at age 16 when she was diagnosed as bi-polar. Prior to that, claimant did not have a history of behavioral challenges. Dr. Hernandez explained that persons with behavior challenges typically are unable to perform academically. Dr. Hernandez noted that claimant was given medications for her mental health issues, including stimulants and

bi-polar, anti-seizure, and mood stabilizer medications. The medications could have made claimant drowsy and anxious, limited her cognitive ability, and affected her activities of daily living and socialization. Dr. Hernandez noted claimant was on-and-off medications to assess their effects on her. Dr. Hernandez noted the medications claimant was taking were not the type that should be used intermittently.

Mother's Testimony and Contentions

69. Mother testified at the hearing and provided detailed written statements describing how she assists claimant in all daily living activities as her primary caregiver, and how claimant is totally dependent on her for financial support. (See Exh. O, pp. B217 to B218; B219 to B228.)

70. Mother contends claimant requires hands-on assistance for all activities of daily living, including personal hygiene and feeding. For example, Mother contends claimant "does not bathe herself; she needs my help to wash her hair and body parts. ... She needs to be reminded several times to take a bath; she does not do it herself." (Exh. O, p. B219.) As another example, Mother contends claimant is unable to order her own food in a restaurant and Mother has to order for her. (*Id.* at p. B218.) Mother also contends claimant "requires considerable assistance to feed herself properly," and claimant "does not cook her food and it is dangerous for her to use the microwave because she does not understand that she should not put metal or paper in it, and she puts herself at risk." (*Id.* at p. B221.)

71. Mother testified claimant is sometimes not aware of her answers in response to questions. For example, Mother testified that claimant cannot cook for herself, cannot use a microwave, and cannot use a knife, but claimant told Ms. Linares she could do those things "to get out of the situation." Mother also claimed that when

claimant told Ms. Linares she goes to the movies with friends, claimant was referring to her dolls, and not actual friends. According to Mother, claimant never leaves the house.

72. At hearing, Mother presented limited school records from claimant's developmental period. None of the school records presented by Mother included an evaluation of claimant for special education eligibility or for a developmental disability, such as Autism.

73. Mother testified she did not contact claimant's teachers or the school district regarding her concerns about claimant's development. Mother claimed her lack of English-language ability and her Latin culture were impediments to obtaining services for claimant. Money was also another limitation. Mother is a single mother and has to work to support the family, so she was not at home to see all of claimant's symptoms.

74. Mother testified claimant did not receive Early Start services. Mother testified claimant attended public schools for elementary school, middle school and high school. Mother testified claimant did not have an IEP but she did receive "counseling, tutoring, and extra hours." Mother testified claimant's disabilities were noticeable; however, due to Mother's limited English-language skills, she was unable to review claimant's school reports and she never asked for a translation.

75. When claimant was school-age, Mother did not respond to inquiries from the school district related to special education services. By a letter dated February 14, 2006, the local school district notified Mother that it received a referral recommending claimant for the Preschool Special Education Program, and the school district wanted to discuss the matter further with Mother but was unable to reach her by telephone.

(Exh. O, p. B229.) The letter provided the name and telephone number Mother should call if she was "still interested in an evaluation for special education services." (*Ibid.*) Claimant never had an IEP. A school district record listed the "IEP Status" as "Cancelled." (Exh. M-1, p. B138.) Mother testified that when she finally called to request an evaluation for an IEP, she was told claimant no longer qualified for an evaluation.

76. Mother presented a Progress Report from claimant's elementary school for the 2006-2007 school year. (Exh. E.) The Progress Report included teacher comments from August to November 2006 that claimant needed to improve in decoding and word recognition, manuscript writing, and mathematical reasoning; claimant worked hastily rather than carefully; and she exhibited discourteous behavior. (*Id.* at p. B35.) The teacher comments from November 2006 to April 2007 described claimant as an enthusiastic learner; she had difficulty settling down to the quiet routines of the classroom; and she needed to improve in decoding and word recognition, number sense, and algebra and functions. (*Ibid.*)

77. No evidence was presented that Mother responded to letters sent by claimant's high school that claimant was at risk of failing her classes. On February 17, 2017, claimant's high school sent Mother a letter notifying her that claimant was at risk of failing her Spanish class. (Exh. E, p. B37.) The letter advised Mother it was urgent that she meet with claimant's teacher to develop a plan of action for claimant to pass her classes. The letter advised Mother she could set up an appointment by calling the Parent Center at the telephone number provided in the letter. Similarly, on September 14, 2018, claimant's high school sent Mother a letter notifying her that claimant was at risk of failing her calculus class. (Exh. E, p. B36.) Like the previous letter regarding

claimant's Spanish class, the September 14, 2018 letter advised Mother it was urgent that she meet with claimant's teacher to develop a plan of action.

78. In her written statement, Mother wrote, in part: "I admit that due to my lack of knowledge about what a disability is, how it manifests, what the different disorders are, I did not pay attention in time because I was focused on working to support my children, the little ones at home and my oldest daughter who had kidney problems at the same time that [claimant] was growing and developing. For this reason, I never realized that something was wrong and thought that she was normal and would develop in time like other children her age." (Exh. K.)

Other Evidence Presented by Mother

EVALUATION BY DR. FREEMAN

79. B.J. Freeman, Ph.D., a licensed clinical psychologist, testified regarding her psychological evaluation of claimant conducted on January 31, 2023, when claimant was 22 years old.

80. Dr. Freeman prepared a Psychological Assessment report which summarized her findings and conclusions. (Exh. Z9.) Dr. Freeman administered the following tests: ADOS-2, ABAS-3, Social Language Development Test, Elementary (SLDT-E), and the Social Responsiveness Scale, Second Edition (SRS-2). Dr. Freeman also reviewed records and other sources of information listed in her report, including but not limited to, the evaluation reports by Drs. Carrillo, Bautista-Bohall, and Meza. The records reviewed by Dr. Freeman listed in her report are dated from April 16, 2018, to April 28, 2022. (*Id.* at p. Z144.)

81. Based on the results of her evaluation, Dr. Freeman opined that claimant meets the DSM-5 criteria for ASD, requiring substantial support for communication and social interaction, and restricted, repetitive behaviors; without intellectual impairment; and with language impairment (pragmatics). (Exh. Z9, p. Z155.) Dr. Freeman also opined that claimant is “substantially disabled” as that term is defined under the Lanterman Act. (Exh. Z9, pp. Z156 to Z158.)

82. In her report, Dr. Freeman wrote: “[Claimant] was diagnosed with autism as a child. With support, she was able to graduate from high school with a diploma in 2000.” (Exh. Z9, p. Z145.) However, as pointed out by Dr. Hernandez’s testimony, there is no evidence that claimant “was diagnosed with autism as a child.” Claimant did not have an IEP in school and she attended regular classes. Claimant received her ASD diagnosis in 2021, when she was 20½ years old.

83. Dr. Brown testified that the core staff team reviewed Dr. Freeman’s psychological evaluation report. As stated in her report, Dr. Freeman observed that claimant was cooperative and came willingly into the testing situation. For the ADOS, Dr. Freeman noted claimant’s speech consisted of one- to two-word sentences to answer questions; there was no variation in claimant’s vocal tone and pitch; claimant did not exhibit stereotypic or echolalic speech; claimant offered information that was irrelevant; the quality of rapport was one-sided and directed by Dr. Freeman; and claimant showed limited imagination or creativity. (Exh. Z9, p. Z148.) Dr. Freeman concluded the results of the ADOS indicated “substantial deficits in verbal and nonverbal communication, significant impairments in reciprocal social interaction, and repetitive, abnormal and stereotyped behaviors and restricted interests.” (*Ibid.*) The core staff team noted a decline in claimant’s adaptive functioning from Dr. Meza’s evaluation in November 2021 to Dr. Freeman’s evaluation in January 2023. Dr. Brown

noted Dr. Freeman's behavioral observations were different than those from previous assessments.

TESTIMONY OF DR. FANG

84. Kevin Fang, M.D., testified on claimant's behalf. Dr. Fang is an Assistant Clinical Professor of Pediatrics at Children's Hospital Los Angeles (CHLA). Dr. Fang was claimant's primary physician between the ages of 18 and 21. He ceased being claimant's primary physician after she turned age 21.

85. Dr. Fang wrote letters dated April 28, 2022, and November 1, 2022, respectively, supporting claimant's diagnosis of ASD and her qualification for regional center services. (See Exhs. A, H.) For example, in the April 28, 2022 letter, Dr. Fang asserted that, although she was only recently diagnosed with autism, claimant has had "long-standing issues" with socialization and independent functioning that began before she turned 18. (Exh. A.) Dr. Fang, in the letter, also opined that claimant "does not have bipolar disorder" and "believes her previous diagnosis was incorrect." (*Id.*)

86. In his November 1, 2022 letter, Dr. Fang wrote that, when he first met claimant three years earlier, she "carried diagnoses of bipolar disorder and avoidant personality disorder." (Exh. H.) Dr. Fang wrote that, as he got to know claimant, he learned from claimant about how she overcame difficulties in her childhood and teenage years. Dr. Fang wrote in part:

In getting to know [claimant] better, she voiced difficulties in navigating social situations, anxiety in social situations (specifically not being able to order food for herself in restaurants due to fear of being wrong), and preferences in being alone. I initially thought it to be a case of being a

misunderstood introvert, but as I came to know her in one on one conversations, I learned that [claimant] was able to get through her childhood and teenage years through studying social situations and conforming to what she found to be expected. She reported that social behaviors do not come naturally to her and she actively had to learn how to do it including maintaining eye contact. ... Once she began ABA services, she reported significant benefit in helping her learn how to function to societal expectations and to be better able to navigate her own autonomy. [Claimant's] historical report of her lived experience feels consistent with children on the autism spectrum.

(Exh. H.)

87. Dr. Fang testified he does not conduct assessments for Autism and he has only a "rough" understanding of the requirements of the Lanterman Act. Further, Dr. Fang testified he has no independent knowledge of claimant's development prior to age 18 because he was not her physician during that period. The information he did learn about claimant's development prior to age 18 was reported to him by claimant and/or Mother.

TESTIMONY OF DR. FLORES

88. Miguel Flores, M.S., BCBA, testified on claimant's behalf. Dr. Flores holds a master's degree in ABA and a doctorate degree in business psychology. He is also a Board Certified Behavior Analyst (BCB) Since 2020, Dr. Flores has been the owner of Flex Learning, which is a behavioral health company that provides ABA services.

89. Dr. Flores knows claimant because Flex Learning was the provider of claimant's ABA services. Flex Learning provided ABA services to claimant from September 2021 until February 2022. Claimant's insurance, i.e., LA Care, did not cover ABA services after age 21. Dr. Flores sent an appeal to LA Care to continue claimant's ABA services, but the appeal was denied. (Exh. D.) Dr. Flores testified claimant was diagnosed with Autism and ADHD when she first came to Flex Learning. Dr. Flores testified Flex Learning has expertise to treat Autism and ADHD but not to diagnose them.

90. Dr. Flores testified claimant made progress on some of her goals during the approximately six-month period she received ABA from Flex Learning. The goals included recalling information that happened in the session, labeling coins, providing her address, and working with a calendar. Claimant's ABA sessions were three times per week, two hours per session. Dr. Flores testified, in the beginning, claimant was quiet during the ABA sessions. She did not initiate interactions with the technician but, instead, waited for the technician to initiate. Claimant would answer questions with few words. The technician would prompt claimant to say more, and she would.

91. Dr. Flores' opinion is that claimant would benefit from receiving ABA therapy and social skills training. In a letter dated November 1, 2022, Dr. Flores wrote, in part: "During [claimant's] ABA therapy, the behavior technician focused on teaching her functional ways to communicate her needs, relevant social emotional skills to engage in with others, and to improve her daily functional/living skills." (Exh. I.)

LEGAL CONCLUSIONS

Legal Principles

1. This matter is governed by the Lanterman Act, set forth at Welfare and Institutions Code section 4500 et seq., and the implementing regulations set forth at California Code of Regulations, title 17, § 54000 et seq.

2. A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the service agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-6.)

3. Generally, when a person seeks to establish eligibility for government benefits or services, the burden of proof is on them to prove by a preponderance of the evidence that they meet the criteria for eligibility. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161; Evid. Code, §§ 115, 500.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324-325.)

4. To establish eligibility for regional center services, a person must prove they have a "developmental disability," which is defined under Welfare and Institutions Code section 4512, subdivision (a)(1), as follows:

"Developmental disability" means a disability that originates before an individual attains 18 years of age, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the

Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism.

This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. (A) For purposes of establishing eligibility under the Lanterman Act, the term "developmental disability" excludes disabling conditions that are solely psychiatric disorders, solely learning disabilities, or solely physical in nature. (Cal. Code Regs., tit. 17, § 54000, subd. (c); Welf. & Inst. Code, § 4512, subd. (a).)

(B) "Solely psychiatric disorders [are those] where there is impaired intellectual functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(1).)

(C) "Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized [intellectual disability], educational or psycho-social deprivation, psychiatric disorder, or sensory loss." (Cal. Code Regs., tit. 17, § 54000, subd. (c)(2).)

(D) "Solely physical in nature" refers to disabling conditions that "include congenital anomalies or conditions acquired through disease, accident, or faulty

development which are not associated with a neurological impairment that results in a need for treatment similar to that required for [intellectual disability].” (Cal. Code Regs., tit. 17, § 54000, subd. (c)(3).)

6. The term “substantial disability” is defined in Welfare and Institutions Code section 4512, subdivision (1)(1), as follows:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

(A) Self-care.

(B) Receptive and expressive language.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

7. In determining if an individual meets the Lanterman Act’s definition of developmental disability, “the regional center may consider evaluations and tests, including but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric

tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. & Inst. Code, § 4643, subd. (b).)

8. Regarding eligibility for regional center services, "the Lanterman Act and implementing regulations clearly defer to the expertise of the DDS (California Department of Developmental Services) and RC (regional center) professionals' determination as to whether an individual is developmentally disabled." (*Mason v. Office of Administrative Hearings* (2001) 89 Cal.App.4th 1119, 1129.)

Analysis

9. In this case, the preponderance of the evidence established Service Agency correctly determined claimant is ineligible for regional center services because she does not have a qualifying "developmental disability" as defined under the Lanterman Act. Specifically, it was not established by a preponderance of the evidence that claimant, prior to age 18, was "substantially disabled" by Autism or ASD.

10. Claimant was diagnosed with ASD in 2021, when she was 20½ years old. However, to establish eligibility for regional center services, claimant must prove she was substantially disabled by ASD prior to age 18. No evidence was presented that claimant had a psychological evaluation for any developmental disability prior to age 18. The Psycho-Social report by Ms. Linares is the only report with information reported by claimant and Mother during claimant's developmental period. Dr. Carrillo's Psychological Evaluation report is the next document closest in time to claimant's developmental period.

11. Applying the ARCA Guidelines to the information contained in the Psycho-Social Report and Dr. Carrillo's report, the preponderance of the evidence supports Service Agency's determination that claimant was not "substantially disabled"

in three of the seven areas of major life activity, as appropriate for claimant prior to age 18. Claimant was not substantially disabled in the area of learning. Her test results indicated cognitive abilities in the normal range. She attended regular classes without an IEP and graduated from high school with a diploma in 2019. Claimant was not substantially disabled in the area of mobility. No limitations in her mobility were observed or reported.

12. Claimant was not substantially disabled in the area of self-care. As documented in the Psycho-Social report, claimant and Mother reported claimant could cook eggs and quesadillas, use a microwave oven, and use utensils. Claimant reported she could take care of her personal hygiene (wash, bathe, brush teeth) and grooming (dress and undress). Mother reported claimant was able to maintain good hygiene with reminders. These reports were consistent with Dr. Carrillo's Vineland results that claimant's overall adaptive functioning was in the low normal range.

13. Claimant was not substantially disabled in the area of receptive and expressive language. Based on testing by Drs. Carrillo and Bautista-Bohall measured claimant's verbal comprehension abilities in the average range, and communication scores on the Vineland were normal (Dr. Carrillo) and high (Dr. Bautista-Bohall). Dr. Carrillo observed that claimant shared and sought out information from him. Similarly, Dr. Meza found during the community outing, claimant was able to engage in reciprocal conversation with him.

14. In the area of self-direction, claimant reported she gets anxious in social situations, especially in large venues with many people. She also reported she does not do her chores when she feels lazy. Dr. Bautista-Bohall's report noted claimant reported having difficulty turning in her school homework on time and having anxiety about class presentations and socializing with peers. The source of these difficulties in self-

direction appear to be the result of claimant's mental health diagnosis, for which she was given medication but did not take consistently. Claimant was diagnosed at age 16 with bi-polar and later mood disorder. Claimant's family has history of depression and anxiety. Dr. Bautista-Bohall opined that claimant's difficulties with socialization might also be explained by ADHD, which is not a qualifying condition for services under the Lanterman Act. Therefore, the preponderance of the evidence does not support a conclusion claimant's deficits in the area of self-direction are due to ASD. She is not substantially disabled by ASD in this area.

15. The areas of capacity for independent living and economic self-sufficiency, respectively, are not fully age appropriate for consideration of claimant prior to age 18. Claimant was living at home with her family, which is financially supported by Mother. Claimant has no history of seeking and obtaining a job outside the home. The evidence showed claimant does have capacity for independent living with proper supports and prompting. Claimant does respond when prompted and redirected (e.g., ordering food at a restaurant when redirected by Dr. Meza). Service Agency's evidence convincingly explained the decrease in claimant's adaptive functioning, as reported by Mother, results from her mental health issues (including bi-polar) and not ASD.

16. Based on the foregoing, claimant's evidence failed to establish by a preponderance of the evidence that she has a developmental disability, as defined by the Lanterman Act, that qualifies her for regional center services. Claimant's appeal shall be denied.

ORDER

Claimant's appeal is denied. Service Agency's determination that claimant is ineligible for services under the Lanterman Act is upheld.

DATE:

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.